

REMARKS/ARGUMENTS

In the Election/Restriction requirement dated November 6, 2007, the Examiner delineated distinct inventions as recited on pages 2-3 of the outstanding Office Action. The Examiner further required the election of single species.

Accordingly Applicants elect Group V (Claims 23-27) drawn to a method of “inhibiting angiogenesis” and the species. 4-[N-(4-methoxyphenyl)-N-[[5-(3,4,5-trimethoxyphenyl)pyridin-3-yl]methyl]amino]-1-[[2-(3,4,5-trimethoxyphenyl)pyridin-4-yl]methyl]piperidine, or a salt thereof, or a solvate thereof.

Group VI (Claims 28-33) drawn to a method of treating a disease or a pathological condition caused by angiogenesis) should be grouped with V since the claims of Groups V and VI form a single general inventive concept.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction (M.P.E.P. § 803). Moreover, when making a lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group (i.e. why there is no single inventive concept) specifically describing the unique technical feature in each group (M.P.E.P. § 1893.03(d)).

Applicants respectfully traverse the restriction on the grounds that the Examiner has not carried out the burden of providing any reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct or providing any reasons and/or examples to support any conclusions that the groups lack unity of invention.

The Examiner asserts that Groups I-VI do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding technical feature.

The Examiner, however, has not considered that the claims in each group are considered related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while PCT Rule 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides, in relevant part, that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to (3) a product, process for the manufacture of said product, and/or the use of said product.”

Moreover, Applicants respectfully submit that a search of all the claims would not improve a serious burden on the Office. As the Office has not shown any evidence that a restriction requirement should now be required when the International Preliminary Report did not, restriction is believed to be improper.

For the reasons set forth above, Applicants request that the Restriction Requirement be vacated.

Applicants further request that if the elected invention is found allowable, withdrawn Groups I-IV and VI which include the limitations of the allowed claims be rejoined M.P.E.P. § 821.04.

Applicants submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Paul J. Killos", is written over a horizontal line.

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